

[UN-REPORTED]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 295 OF 1989.

The State of Maharashtra	]
(At the instance of	]
Shri V.K.Garg,	]
Assistant Collector,	]
Central Excise & Customs,	]
Preventive Branch, Hqrs.,	]
Pune.	] Appellant.

versus.

Shri Ganesh Harishchandra	]
Ghodake, age 34 years,	]
Occupation : Business.	] Respondent.
residing at Mohantara Building	] (Ori.Accused)
94/2,, Erandavana, Pune-411 004	]

Mr.D.N.Salvi, PP, for the State.

Mr.S.G.Surana for the respondent.

CORAM : D.G.DESHPANDE, J.

DATED : 13th August 2004.

ORAL JUDGMENT

1. This is an appeal filed by the State against the acquittal of the accused under Section 135(1)(b) of the Customs Act punishable under Section 135(1)(b)(i) of the said Act.

2. Heard Mr.Salvi, learned PP, for the State and Mr.Surana, advocate appearing for the respondent/accused.

3. The case of the prosecution was that upon information, custom officers of Preventive Branch, Head quarters Pune, searched the residential premises and compound of the accused on 15/11/1984. The search resulted in the recovery of the goods of foreign origin viz. V.C.R., V.C.R. cassettes, recording and play back models etc. totally valued at Rs.1,44,950/-. The accused was present at the time of search and, according to the prosecution, he could not produce any documentary evidence about import of these goods. Adjudication

proceedings were undertaken by the Additional Collector of Central Excise and Customs who ordered confiscation of the goods and imposed penalty of Rs.36,000/- on the accused. In this background, a complaint came to be filed under Section 135(1)(b)(i) of the Customs Act and the accused came to be prosecuted.

4. The prosecution has examined in all ten witnesses in support of its case, one of them was Pandi Ramchandra Kulkarni (PW 1) - the officer who was heading the raiding party at Exhibit 16. Two panch witnesses to the seizure panchanama (Exh.18) viz. Pradeep Subhash Maid (PW No. 2) and Sanjay alias Madhav Murlidhar Gulankar (PW No.3). Both of them turned hostile. The next witness is Vijay Narayan Lad (PW 4) - the Inspector in Central Excise Dept. He was the member of raiding party. P.W.5 - Gajanan Dattatray Gujar who conveyed the information which he has received about the accused to the Dy.Collector T.K.Jairamani and from whom he obtained search warrant. P.W.6 Kiran Laxman Thakur - the Inspector of Central Excise. His evidence is about disposal of the goods seized. P.W.7 - Vasudeo Sharma - the Rationing Officer.

P.W.8 Vasant Karmarkar who turned hostile. P.W.9 Sau Anupama Arvind who was the Asstt.zonal Officer in Rationing Office. And P.W.10 - Madhukar Dinkar Phadake the Superintendent Central Excise and Customs incharge of the prosecution cell.

5. The raid and seizure in the case are of 15.11.1984. The case number before the Magistrate is CC No.81/87. The judgment of acquittal came to be delivered on 3.11.1988.

6. Similar appeal involving similar question was decided by me vide Appeal No.651 of 1989 on 26th July 2004. That case was also about under the same provisions of Customs Act and the accused were found in possession goods of foreign origin valued at Rs.43260/- and Rs.5900/- . In that case raid was carried out on 13.9.1985. The accused came to be acquitted by the trial Court. Criminal Appeal was filed in 1989 and on 26th July 2004 I heard and decided the matter. Mr.Shirish Gupte appeared for the accused in that appeal against acquittal. He has contended in that matter that acquittal of the accused under the Customs Act was challenged and coming for

final hearing after 19 years. Adjudication proceedings were started; the goods were confiscated and the accused paid the penalty. Sanction in that case was not proved for non-examining the Sactioning authority i.e. Mr.Mohile, the Collector, Customs and Central Excise, Pune. Those contentions were accepted and the appeal against acquittal was dismissed by me.

7. Mr.Surana, appearing for the accused in this case, pointed out that if on similar facts and similar issue the court decided the appeal of the State against acquittal and dismissed it, then there was no reason to take another view of the matter. He also contended that in this case the raid is of 15.11.1984. The accused came to be acquitted by the trial Court by its judgment dated 3.11.1988. This appeal filed in 1989 and coming up for final hearing after 20 years of the offence and, therefore, unless it was shown that the judgment of the trial Court was perverse, there is no reason for the court to interfere with.

8. Mr.Surana also contended that Mr.Mohile

was the same Collector, Customs and Central Excise, Pune who had accorded the sanction in this case. He was not examined by the prosecution and his signature only was proved and therefore subjective satisfaction of the sanctioning authority. According to Mr.Surana granting sanction was a mental process and sanctioning authority was required to be proved that he was satisfied after perusal of the record before granting the sanction and, in view of non-examining sanctioning authority, the reasoning of the trial Court in that regard was not required to be interfered with.

9. Mr.Surana also contended that in this case also adjudication proceedings were initiated, goods were confiscated, and the penalty of Rs.36,000/- was imposed upon the accused which the accused has paid long back. According to Mr.Surana, therefore, there are no reasons to make any distinction between two cases and this appeal is also required to be dismissed.

10. Mr.Salvi, the learned PP, on the other hand contended that so far as sanction is concerned, presumption under Section 114 (e) that

the official acts have been regularly performed was liable to be drawn and sanction was required to be taken as proved. He relied upon for this purpose the judgment of the Supreme Court reported in **AIR 1991 SC 1260 [State of Bihar v. Shri P.P.Sharma]** and placed reliance particularly upon para 67 of the said judgment.

11. However, this judgment of the Supreme Court is of no use because in that case, the accused had challenged the FIR before Patna High Court vide their Petition No. 289 of 1989 with a prayer for quashing of FIR. In the mean time investigation in that case was completed by the police and two police reports one under Section 7 of the Essentail Commodities Act and other under various sections of the Indian Penal Code were submitted before the Competent Court in October 1988. The Special Judge, Patna High Court heard the arguments of the parties on the question as to whether there was sufficient material in the police reports to take cognizance of various offences. The Special Judge concluded the arguments and reserved the orders. In the mean time, Tapeswar Singh filed Miscellaneous Petition in the High Court on February 17, 1989

and P.P.Sharma filed writ petition 90 of 1989 for quashing of the FIR and the police reports. Thereafter, the Patna High Court heard the arguments in writ petition 90 and 228 of 1989 and allowed the writ petitions and quashed the FIR. These orders of the Patna High Court were under challenge before the Supreme Court in this reported judgment.

12. It will be, therefore, clear that the stage of quashing the FIR and the stage arising of conclusion of trial are totally different. The observations made by the Supreme Court regarding sanction with reference to Section 114(e) of the Evidence Act are at a stage of quashing of FIR.

13. In the case before me in this present appeal the trial is concluded and the accused is acquitted. The question is whether sanction is properly proved or not and, the answer is that for non-examining sanctioning authority without any just and sufficient cause, the sanction cannot be held to be proved by mere proving the signature of the Collector of Customs Mr.Mohile. The findings of the trial Court in that regard

are proper and cannot be required to be interfered with.

14. Secondly, this appeal against acquittal has come up for final hearing after 20 years of the raid; adjudication proceedings are over; goods have been confiscated and the accused has paid the penalty of Rs.36,000/- about which there was no dispute.

15. There is nothing in the judgment of trial Court according to which it can be said that the judgment is perverse. The trial Court has considered all the important aspects of the matter. Further no evidence was adduced to show that the goods were of foreign origin. Mere branding the names appearing on the goods; appearing the names of some foreign countries cannot be held to be sufficient proof of the fact that the goods were of foreign origin.

16. Most important aspect of the matter, in addition, is that some goods were found in the house of the accused and some goods were found in compound of the Mohan Tara Building. In first six rooms parents of the accused were residing.

In the next three rooms brother of the accused was residing. In the out house near the main building another brother of the accused was residing. Therefore, in all four families forming different unit were residing in Mohan Tara Building. There was one sweet shop situated in the building. There was a Bhatti ie. furnace for preparing sweets. And it was not the case of the prosecution that the entire rooms of Mohan Tara Building were in exclusive possession and control of the accused. Therefore, the Court has rightly held that liability in respect of the goods found outside the building cannot be fasten upon the accused alone. The goods were found beneath the dog cage and in other open space over which the accused alone had no full and dominion control. As per the panchanama and as per the evidence of P.W.1 two VCRs; five video cassetts; one table clock, etc. as per Articles 6 to 12 were found in the house. Then this witness has stated that in the compound of the same building there are five rooms like out house. These rooms are exactly at the back side of the main building. Then there is open space in between the main building and the out house and some construction for place for dog, latrin

and bath room was there and, at this place other articles mentioned in the panchanama were found and they were two VCRs of foreign origin and other articles. Therefore, it will be clear that in the absence of any evidence about exclusive possession and dominion control over the space in the compound and court yard, no liability can be fastened with the accused. The judgment of the trial Court is, therefore, based on sound reasoning. No interference is called for. Therefore the appeal is dismissed. The accused/respondent is on bail. His bail bond shall stand cancelled.

[D.G.DESHPANDE]

13/08/2004

JUDGE.